

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

LEROY HILBERTO ZUBIATE,
TDCJ-CID No. 01944643,

Plaintiff,

v.

STATE OF TEXAS, *et al.*,

Defendants.

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2:24-CV-165-Z-BR

FINDINGS, CONCLUSIONS AND RECOMMENDATION
TO DISMISS COMPLAINT

On October 4, 2024, Plaintiff Leroy Hilberto Zubiato, acting *pro se* and while a prisoner incarcerated in the Clements Unit of the TDCJ, filed a Complaint apparently alleging violations of his constitutional rights under 42 U.S.C. § 1983. (ECF 3).

On September 17, 2024, the Court issued a Deficiency Order, ordering Zubiato to (1) file his complaint on the proper form; and (2) submit a short, plain and intelligible statement of his claims in compliance with Fed. R. Civ. P. 8. The Court found that Zubiato's initial Complaint is "voluminous, and contains such a broad mix of unreadable handwriting, records and other materials as to be unintelligible as a pleading." (ECF 10 at 2). However, the Court gave Zubiato an opportunity to amend his Complaint to comply with Rule 8 and provided him the proper form to use. (*Id.*). Zubiato did not respond. On November 19, 2024, the Court *sua sponte* extended Zubiato's deadline to amend to December 10, 2024. (ECF 12). While Zubiato sent a letter to the Court on December 3, 2024, he did not correct the deficiencies outlined in the Court's two Deficiency Orders. (ECF 13). Zubiato neither responded to the orders nor amended his Complaint.

The Court has given Zubiato ample opportunity to comply with its order, yet he has failed

to do so. Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1988); *see* FED. R. CIV. P. 41. “This authority [under Rule 41(b)] flows from the court’s inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 82 S. Ct. 1386 (1962)).

A *pro se* litigant is not exempt from compliance with relevant rules of procedural and substantive law. *Birl v. Estelle*, 660 F.2d 592, 593 (5th Cir. 1981); *Edwards v. Harris County Sheriff's Office*, 864 F. Supp. 633, 637 (S.D. Tex. 1994). A *pro se* litigant who fails to comply with procedural rules has the burden of establishing excusable neglect, which is a strict standard requiring proof of more than mere ignorance. *Kersh v. Derozier*, 851 F.2d 1509, 1512 (5th Cir. 1988); *Birl*, 660 F.2d at 593.

Dismissal without prejudice under Rule 41(b) is appropriate here. Zubiate’s failure to comply with the Court’s Deficiency Order appears to reflect an intent to abandon this lawsuit rather than to create purposeful delay. Regardless, this case cannot proceed without his compliance.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge that the Amended Complaint filed by Leroy Hilberto Zubiate (ECF 3) be DISMISSED without prejudice.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Findings, Conclusions and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED February 25, 2025.


LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Findings, Conclusions and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge and accepted by the district court. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1), *as recognized in ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).